

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

**GUIDANCE TO TRUSTEES ON PROPER PROCEDURE
FOR DISPOSITION OF ADVERSARY PROCEEDINGS**

This memo supplements the guidance on proper procedure for disposition of adversary proceedings, previously issued by the Court, and is directed specifically at trustees.

Particularly relevant portions of the general guidance are repeated here:

Complaints to Deny or Revoke Discharge. Fed.R.Bankr.P. 7041 and S.D.Ind. L.R. B-7041-2 add special requirements for disposition of complaints to deny or revoke discharge under 11 U.S.C. §727. Any dismissal must be served on parties in accordance with the local rule.

While the local rule on its face may be unclear, it was intended to apply to notices of dismissal. A notice of dismissal or stipulation of dismissal, if properly served in accordance with the local rule on the trustee, United States Trustee, and counsel of record in the bankruptcy case, will be held for twenty days. Parties receiving notice of the dismissal have an opportunity to object during that time. If no objection is filed, the adversary proceeding is closed. Any agreed judgment (other than a settlement with the case trustee, which is discussed below) must also be properly served and the order approving same will not be entered until the twenty-day objection period has passed.

Settlements with Trustees. Fed.R.Bankr.P. 9019 and S.D.Ind. L.R. B-9019-1 establish additional requirements for settlements with trustees or debtors-in-possession - which would include settlements of complaints to deny or revoke discharge, and also of actions seeking recovery of property of the estate. The trustee does not have to be the plaintiff for these rules to apply. These requirements would also apply to actions pursued by Chapter 13 debtors.

Notice and opportunity for hearing on such settlements are required. The proper procedure is to file a motion to compromise and settle in the legal case, not the adversary proceeding. That pleading should only have the

legal caption, as the body of the motion should contain the adversary proceeding information necessary to generate an appropriate notice. Noticing will then occur in the legal case. If no objection is filed, or if any objection is overruled, the Court will grant the motion in the legal. At that point the parties in the adversary proceeding will file in the adversary proceeding a notice of dismissal, stipulation of dismissal, or agreed judgment - whatever is appropriate under the circumstances - pursuant to Fed.R.Bankr.P. 7041.

Post-Settlement Procedures. Presuming that the parties have followed the proper procedure for creating an enforceable judgment, efforts to collect on that judgment are governed by S.D.Ind. L.R. B-7069-1. If the agreement gives the trustee rights to request something other than the payment of money, such as revocation of discharge with no or limited notice, then the procedure for enforcement should have been stated in the motion to compromise and settle. The order entered in the main case can be enforced without reopening the adversary proceeding.

Example: debtor agrees to remit funds due the estate, and agrees that if debtor fails to do so by date certain trustee can file notice of failure in the legal case, with service on debtor and debtor's counsel, and if no response by debtor Court can enter order revoking discharge without further notice and hearing. Proposed settlement is filed in the legal case, and after notice the Court enters an order accepting the terms. If debtor defaults, trustee can proceed as agreed in the legal case - and discharge can be revoked without reopening the adversary proceeding or commencing a new one.

April 27, 2007

Kevin P. Dempsey
Clerk